



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 31, 1994

Mr. Arturo G. Michel
Bracewell & Patterson
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR94-237

Dear Mr. Michel:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25889.

The Victoria Independent School District (the "school district"), which you represent, has received a request for a copy of a certain school teacher's personnel file. You advise us that some of the requested information has been made available to the requestor. You object, however, to release of some of the requested information and claim that sections 552.101, 552.102, 552.111, and 552.114 of the Government Code except it from required public disclosure.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.114 excepts "information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.026 incorporates the requirements of the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, into the act. Open Records Decision No. 431 (1985). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein . . .) of students without the written consent of their parents to any individual, agency, or organization

20 U.S.C. § 1232g(b)(1). "Education records" are records that

- (i) contain information directly related to a student; and

- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987) at 14-15; 447 (1986).¹ Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982); 206 (1978). Release of a student's handwritten comments, even if unsigned, is prohibited under FERPA and section 552.114 because it would make the student's identity easily traceable. Open Records Decision No. 224 (1979).

We have examined the information submitted to us for review. It contains some information that identifies or tends to identify students. This information has been marked and may be released only in accordance with FERPA.

We note, however, that some of the requested information, namely a student roster, appears to fall within the definition of "directory information." The general prohibition against release of student information does not apply to "directory information." "Directory information" may be released under FERPA after compliance with notice requirements that afford affected students the right to object to the release of directory information relating to them. 20 U.S.C. § 1232g(a)(5)(B); *see also* Open Records Decision Nos. 244, 242 (1980); 229 (1979). "Directory information" includes, but is not limited to, the following:

the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

20 U.S.C. § 1232(g)(a)(5)(A). An educational institution may establish additional categories of directory information, provided that it complies with federal notice requirements. *See* 34 C.F.R. §§ 99.3, .37; *see also* Open Records Decision Nos. 244 (1980); 151 (1977). We have marked the student roster. The school district, after complying with federal notice requirements, must release it to the extent that it includes only the students' names, dates of enrollment, dates of birth, and addresses.²

¹The phrase "student record" in section 552.114 has generally been construed to be the equivalent of "education records." Thus, our resolution of the availability of this information under FERPA in this instance also resolves the applicability of section 552.114 to the requested information. *See generally* Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990); 477 (1987); 332 (1982).

²Questions about FERPA can be directed to:

The teacher's personnel file includes a list showing the results of tuberculosis testing for several employees, including the teacher in question. Since the requestor asked for personnel file information concerning only one teacher, his request does not encompass the test results for any other teachers. You claim that section 552.101 of the Government Code in conjunction with common-law privacy and section 552.102 of the Government Code, which excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," excepts the result of the teacher's test for exposure to tuberculosis from required public disclosure. Sections 552.101 and 552.102 protect information only if its release would cause an invasion of privacy under the test articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public.

We have examined the information that you seek to withhold under sections 552.101 and 552.102. We need not determine whether the result of a person's tuberculosis test is intimate or embarrassing, because, even if it is, the result of a public school teacher's test is of legitimate public concern. Accordingly, we conclude that the result of the teacher's tuberculosis test may not be withheld from required public disclosure under sections 552.101 and 552.102 of the Government Code.

You also claim that section 552.111 of the Government Code excepts some of the requested information from required public disclosure. Section 552.111 excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the section 552.111 exception and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. In addition, this office held that an agency's policymaking functions do not encompass internal administrative or personnel matters, because disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. The requested information relates to an internal administrative and personnel matter, *i.e.*, an employee grievance. Accordingly, we conclude that section 552.111 of the Government Code does not except the requested information from required public disclosure. Except as noted above, the requested information must be released in its entirety.

(Footnote continued)

Family Policy Compliance Office
Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-4605
(202) 732-1807

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Open Government Section

SG/GCK/rho

Ref.: ID# 25889
ID# 25981

Enclosures: Submitted documents